



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2011-0563]

RIN 1625-AA01

Special Anchorage Areas; Port of New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing two special anchorage areas, Special Anchorage Area North and Special Anchorage Area South, along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin; revising the New York City Harbor Master phone number for Sheepshead Bay, NY; and disestablishing the Captain of the Port New York Commercial Mooring Buoy permit regulations and table displaying the mooring anchor, chain, and pendant requirements. The Coast Guard is not establishing two special anchorage areas on Sandy Hook Bay or disestablishing the western special anchorage area in Sheepshead Bay, as originally proposed. This action is necessary to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more

than 65 feet in length. This action is intended to increase the safety of life and property in New York City, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2011-0563]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone (718) 354-4195, e-mail [Jeff.M.Yunker@uscg.mil](mailto:Jeff.M.Yunker@uscg.mil) or Lieutenant Isaac Slavitt, Waterways Management Division at Coast Guard First District, telephone (617) 223-8385, e-mail

[Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NYC PARKS	New York City Department of Parks and Recreation

A. Regulatory History and Information

On February 6, 2012, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage Areas; Port of New York, NY in the Federal Register (77 FR 5743). We received 13 comments on the proposed rule. A public hearing was requested, but none was held since the written comments clearly expressed the views of the commenters and oral presentations would not aid in the rulemaking process.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The specific reasons for this rulemaking are requests submitted by the local governments with jurisdiction over the current mooring fields and special anchorage areas to clarify their usage. Additionally, the removal of the Captain of the Port New York Commercial Mooring Buoy permit regulations and table § 110.155(L)(7) displaying the mooring anchor, chain, and pendant requirements aligns these regulations with current U.S. Army Corps of Engineers permitting regulations.

The purpose of this rule is to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more than 65 feet in length, increase the safety of life and property in New York City, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received a total of 13 comments regarding the NPRM.

No comments were received regarding the establishment of the two special anchorage areas, Special Anchorage Area North and Special Anchorage Area South along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin.

The Coast Guard received one comment from the U.S. Department of the Interior stating they had no comment at that time.

The Coast Guard received one comment that simply restated a portion of the proposed rulemaking.

The Coast Guard received ten comments regarding the establishment of the two special anchorage areas, Atlantic Highland North and Atlantic Highland South, on Sandy Hook Bay at Atlantic Highlands, NJ.

Of the ten comments relating to the Atlantic Highland areas, four comments simply expressed support of establishment of the special anchorage areas.

Four additional comments requested an expansion of the proposed boundaries of the special anchorage areas beyond the boundary initially proposed in the NPRM. The comments stated that the special anchorage areas with designated vessel mooring positions would create hazardous conditions by transient vessels anchoring outside of the special anchorage areas. The comments stated that transient vessels would deploy anchors and chain of various lengths within the special anchorage areas risking collisions between the vessels.

Two comments requested that the requirement for mariners using the Atlantic Highlands special anchorage

areas to contact the local Harbor Master be deleted. One of these comments stated that the Municipal Harbor Master only has the authority to manage the 172 moorings within the special anchorage areas and that there is no law authorizing the Federal government to require mariners to notify the Harbor Master. One of these comments questioned whether the Federal government had authority to give navigational control of tidal waters to a municipal entity or to require mariners using the anchorage to notify the Harbor Master. Additionally, one of these comments stated that the channel markers installed by Atlantic Highlands Harbor are at odds with the boundary of the special anchorage areas, particularly the southeast corner of the northern special anchorage area. The lighted piling is approximately 80 feet northwest of the southeast corner of the proposed special anchorage area.

Based upon the comments received we conducted a site visit with the Atlantic Highlands Harbor Master on July 18, 2012. After reviewing the As-Built Mooring Field Construction Plan provided by the Harbor Master, we determined that eight helical anchors were installed outside of the proposed special anchorage areas and 28 of 29 unlit vessels would swing outside of the special anchorage areas. The presence of these unlit vessels

outside of the special anchorage areas would create an unsafe condition for other vessels transiting the area.

Additionally, floating docks installed adjacent to the proposed northern special anchorage area are not depicted on the National Oceanic and Atmospheric Administration Chart. This further decreases the area available for vessels transiting between the proposed northern special anchorage area and the docking facilities.

Based upon these findings we are withdrawing the two proposed special anchorage areas in Atlantic Highlands, NJ from this rulemaking. The local Harbor Master will continue to resolve mooring location issues as they have done in previous years prior to requesting the establishment of these special anchorage areas. With regard to the comments regarding contacting the local Harbor Master, we note that that section has also been removed from this final rule, and thus the comments on that issue are moot.

We received one comment in opposition to the disestablishment of the western special anchorage area in Sheepshead Bay, NY. The comment stated that the western special anchorage area in Sheepshead Bay is useful for transients and visiting vessels under 65 ft in length because the yacht clubs and marinas within Sheepshead Bay

have very few moorings capable of accommodating vessels greater than 40 ft in length; therefore visiting vessels with lengths between 40 and 65 feet must anchor outside of these mooring fields if they are to stay in Sheepshead Bay. The commenter also stated that Sheepshead Bay is located away from the major shipping channels of New York Harbor and accommodating transient boaters in the special anchorage area tends to keep them from interfering with the large commercial vessels. Additionally, the comment stated that the special anchorage area provides a relatively convenient access to public transportation, onshore shopping and amenities which facilitate interstate and international commerce.

Based upon this comment we are withdrawing the proposed disestablishment of the western special anchorage area in Sheepshead Bay, NY.

Finally, we are adding the contact phone number for moorings in Sheepshead Bay, NY, and clarifying language regarding the role of the local Harbor Masters.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.



## 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule will not affect normal surface navigation. Although this regulation may have some limited impact on the public due to the alteration of traffic patterns, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as the special anchorage areas on the Hudson River have historically been used as mooring fields by NYC PARKS.

The regulation requiring all vessels anchoring in Sheepshead Bay, NY to remain entirely within the northern and southern special anchorage areas at all times has the potential to reduce the number of vessels that are able to anchor within the special anchorage areas. However, this is necessary to maintain an open area for larger charter

fishing vessels and event vessels transiting to and from NYC PARKS maintained fishing piers to the west.

We expect minimal additional cost (and the potential for reduced costs due to the removal of certain regulations) impacts on the tug and barge operators because this rule will disestablish USCG permitting regulations that are currently under the jurisdiction of the District Engineer, U.S. Army Corps of Engineers.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of recreational and small fishing vessels intending to anchor in the Hudson River and

Sheepshead Bay, NY.

The rule will not have a significant economic impact on a substantial number of small entities for the same reasons outlined above in the "Regulatory Planning and Review" section.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of special anchorage areas and disestablishment of anchorage ground regulations. This rule is categorically excluded from further review under paragraph 34(f) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 110

Anchorage Grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

#### PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.60 by adding paragraphs (c)(12) and (13) and (d)(8)(i) and (ii) to read as follows:

§ 110.60 Captain of the Port, New York.

\* \* \* \* \*

(c) \* \* \*

(12) *79th Street Boat Basin South.* All waters of the Hudson River enclosed by a line beginning at the northwest corner of the 70th Street pier at approximate position 40°46'47.10"N, 073°59'29.13"W; thence to 40°47'02.60"N, 073°59'17.88"W; thence to 40°46'59.73"N, 073°59'13.01"W; thence along the shoreline and pier to the point of beginning.

(13) *79th Street Boat Basin North.* All waters of the Hudson River enclosed by a line beginning on the shoreline near West 110<sup>th</sup> Street at approximate position 40°48'21.06"N, 073°58'15.72"W; thence to 40°48'21.06"N, 073°58'24.00"W; thence to 40°47'14.70"N, 073°59'09.00"W; thence to 40°47'11.84"N, 073°59'08.90"W; thence along the breakwater and shoreline to the point of beginning.

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (c)(12) and (13) of this section will be under the supervision of the local Harbor Master appointed by the City of New York. Mariners



may contact the boat basin on VHF CH 9 or at (212) 496-2105 for mooring and anchoring availability. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

(ii) [Reserved.]

(d) \* \* \*

(8) \* \* \*

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (d)(6) through (8) of this section will be under the supervision of the local Harbor Master appointed by the City of New York. Mariners may contact the Harbor Master at (718) 478-0480. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage. For guest moorings and access to and from the anchorage areas described in paragraphs (d)(6) through (8) mariners may contact the following boating clubs: Miramar Yacht Club (718) 769-3548; Port Sheepshead (917) 731-8607; or Sheepshead Yacht Club (718) 891-0991.

(ii) [Reserved].

\* \* \* \* \*

3. Amend § 110.155 by revising paragraph (1)(8) to read as follows:

§ 110.155 Port of New York

\* \* \* \* \*

(1) \* \* \*

(8) Operations near commercial mooring buoys permitted by the District Engineer, U.S. Army Corps of Engineers.

(i) No vessel shall continuously occupy a mooring when a vessel in regular traffic requires the berth or when navigation would be menaced or inconvenienced thereby.

(ii) No vessel shall moor or anchor in any anchorage in such a manner as to interfere with the use of a duly authorized mooring buoy. Nor shall any vessel moored to a buoy authorized by the District Engineer, U.S. Army Corps of Engineers be moored such that any portion of that vessel comes within 50 feet of a marked or dredged channel.

(iii) No vessel shall be operated within the limits of an anchorage at speed exceeding 6 knots when in the vicinity of a moored vessel.

(iv) In an emergency the Captain of the Port may shift the position of any unattended vessel moored in or near any anchorage.

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Dated: May 2, 2013

D. B. Abel  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

[FR Doc. 2013-19981 Filed 08/19/2013 at 8:45 am;  
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